

## REMARKS/ARGUMENTS

Claims 35-50 are pending in the application and claims 35-50 have been rejected by the Examiner.

Claim 46 is currently amended.

### Rejections under 35 U.S.C. 103(a)

A. Claims 35, 36, 38-41, 43 and 44 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Publication No. 2002/0127319 to Gare (“the Gare Reference”), in view of U.S. Patent No. 5,019,406 to Ang et al. (“the Ang Reference”) and U.S. Patent No. 5,296,253 to Lusas et al. (“the Lusas Reference”).

The Examiner states that the Gare Reference discloses a composition containing vegetable fiber, an inorganic calcium compound, modified cellulose, and bean fiber.

The Examiner further states that the Lusas Reference teaches a legume powder, the legume powder present at least 25% of the blended mixture, and that the Ang Reference teaches a food additive wherein the additive is entirely composed of cellulose, bean fiber, and vegetable fiber.

Applicant respectfully disagrees with the Examiner’s rejection of Claims 35, 36, 38-41, 43, and 44. The Gare Reference teaches a lower calorie food additive which can be used, for example, in beverages and salad dressing. The reference teaches a composition containing psyllium fiber and xylitol. The reference goes on to state in an extensive list of possible forms of fiber that vegetable fiber including peas, legumes, and potato fiber is acceptable. The reference also teaches in paragraph [0036] that calcium salts may be added to achieve the desired taste, pH, or other properties.

However, the Gare Reference does not teach fiber in a proportion of between 50 to 90% by weight of the total additive, and in fact teaches in paragraph [0033] that “by the use of the ingredients defined below, which are all natural food ingredients, in the proportions specified, it is possible to obtain reduced calorie products...”, emphasizing that the proportions taught in the reference are important for obtaining the desired properties. This would have discouraged one of skill in the art from attempting to modify the proportions of the ingredients using the teachings of the other cited references.

The Ang Reference does not teach the currently claimed proportion of fiber to total additive volume, does not teach a water-soluble fiber component, and does not require calcium salts. Moreover, the Ang Reference teaches a method of reducing the lipid content of fried foods by adding a fiber component, meaning that the additive consists entirely of the fiber component rather than consisting of multiple components as recited in the current claims.

In addition, the step of frying the baked good is required to achieve the desired effect taught in the Ang Reference, namely reducing the lipid content of a fried food product. In contrast, the Gare Reference describes a food additive which does not require cooking. A skilled artisan would therefore not have been motivated to combine the improved frying methods with the Gare Reference, which seeks to provide a low-calorie additive for products such as beverages and salad dressings (see paragraph [0035]) which would not even necessarily be cooked, and are not intended to be fried. The function of the fiber in the Ang Reference is to reduce the amount of lipid or fat retention during the frying process (column 2, lines 64-67), while the function of the fiber in the Gare Reference is to provide a bulking agent for the artificial sweetener xylitol, and to mimic the properties of sugar other than the sweetness which is provided by the xylitol (paragraph [0008]). Finally, there is no teaching or suggestion either in the cited references or within the knowledge of those of skill in the art which would lead one to expect that the addition of a fiber component in the additive as currently claimed would have improved properties with regard to microwaving. Therefore, one of skill would not have combined the teachings of these diverse references in an attempt to solve the problem addressed by the currently claimed invention.

The Lusas Reference does not teach the currently claimed proportion of fiber to total additive volume, and does not require calcium salts. The reference does teach that the fiber component represent at least 25% of the *total volume* of the final food product, however the current claims recite a fiber component which represents 50%-90% of the *additive volume*. In addition, the additive of the Lusas Reference is to be used in a product which is cooked (column 5, lines 10-12 and lines 30-51), meaning that one of skill in the art would not have been motivated to combine the teachings of this reference with the teachings of the Gare Reference which describes a product for use in beverages and salad dressings.

In summary, although the cited references describe inventions which relate to food additives, they relate to food additives with very different purposes from one another and also

from the current claims. The Gare Reference recites a food additive which is intended to provide a lower calorie substitute for sugar using fiber to provide additional properties which mimic sugar, for example in baked goods. The food additive taught in the Ang Reference teaches the addition of a fiber component alone to batters in order to reduce lipid retention during frying. The Lusas Reference describes a food product, rather than an additive, in the form of a cooked mixture of legumes and cereal grains, which is seen to have advantageous nutritional properties when compared to pure cereal food products. The currently claimed food additive can be used to provide an improved flavor, texture and crispness in food which has been microwaved.

Because of the vastly different teachings of these references and the current claims, as well as the differences in composition described in detail above, the skilled artisan would not have been motivated to combine the teachings of the cited references with one another, or to attempt to use them to solve the problem solved by the present invention.

**B. Claim 37 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Gare, in view of Lusas et al. and Ang et al., and further in view of U.S. Patent No. 5,902,629 to Baker et al. (“the Baker Reference”).**

As described in detail above, the teachings of the Gare, Ang and Lusas References do not teach the currently-claimed proportions of the fiber component, or the requirement for calcium salts. Moreover, the three cited references use their various fiber components to achieve entirely distinct objectives, also described above. Therefore, an artisan would not have had reason to use the fiber component of one in combination with the teachings of another to achieve the currently claimed invention.

The Examiner has stated that the Baker Reference discloses a bean powder made from lima beans, and that it would have been obvious to a skilled artisan having the teaching of the Gare, Lusas, and Ang References to modify the components of the three references to include the lima bean of Baker because the lima bean is economical and cooks quickly, which would be advantageous in microwave cooking.

Applicant respectfully disagrees. The fiber component of the current invention can be used to provide improved flavor, texture and crispness in food which has been microwaved, and the cooking properties of the lima bean itself are therefore not relevant unless the lima bean can confer improved properties to the food to which it is added. The teaching of the Baker Reference

does not suggest that lima bean powder would have properties which would improve the quality of foods to which it is added when microwaved. Significantly, the Gare, Ang, and Lusas References do not teach methods for improving the quality of microwaved foods, and therefore a skilled artisan would not have combined the disclosure of the Baker Reference relating to lima beans with these references in an attempt to arrive at the currently-claimed invention.

**C. Claims 42, 45-48 and 50 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Gare, in view of Lusas et al., Ang et al. and U.S. Patent No. 6,123,975 to Ohlin et al.**

As described in detail above, the teachings of the Gare, Ang and Lusas References do not teach the currently-claimed proportions of the fiber component, or the requirement for calcium salts. Moreover, the three cited references use their various fiber components to achieve entirely distinct objectives, also described above. Therefore, an artisan would not have had reason to use the fiber component of one in combination with the teachings of another to achieve the currently claimed invention.

Nevertheless, the Examiner has stated that the Ohlin Reference discloses modified cellulose present in an amount of 1-6% in a food additive product, and that it would have been obvious to a skilled artisan having the teaching of the Gare, Lusas, and Ang References to modify the teachings of the three references to include the teachings of the Ohlin Reference because modified celluloses are a good substitute for flour.

Applicant respectfully disagrees. Regarding Claim 42, an objective of the current claims is not to provide a substitute for flour, but rather to provide improved flavor, texture and crispness in food which has been microwaved. Rather than substitute for flour, it is intended to provide different and advantageous properties than flour. The unique combination of all of the claimed elements of the composition is required to achieve the desired effect, and therefore the existence of a reference describing modified cellulose in a proportion of 1-6% of an unrelated food additive would not have provided motivation to a skilled artisan to combine that teaching with the teachings of Gare, Lusas, and Ang in order to arrive at the currently-claimed invention.

Regarding Claim 45, in light of the differences between the Gare, Lusas, and Ang References described in detail above, a skilled artisan in possession of the teaching that an

unrelated food additive can be used in a concentration of 2% to 20% of a dough product would not have had sufficient teaching to arrive at the currently claimed unique composition.

Regarding Claims 46, 47, and 48, as discussed in detail above, the Gare, Lusas, and Ang References lack elements and teaching which would motivate one of skill in the art to arrive at the currently claimed invention. The teaching of the Ohlin Reference that fully or partially baked products may be prepared in a microwave does not provide the missing elements and teaching to a skilled artisan. Applicant has amended Claim 46 to more clearly define the embodiment recited therein.

Regarding Claim 50, as discussed in detail above, the Gare, Lusas, and Ang References lack elements and teaching which would motivate one of skill in the art to arrive at the currently claimed invention. The teaching of the Ohlin Reference that products could be frozen does not provide the missing elements and teaching to a skilled artisan.

**D. Claim 49 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Gare, in view of Lusas et al., Ang et al., Ohlin et al., and further in view of U.S. Patent No. 6,488,957 to Koumarianos (“the Koumarianos Reference”).**

As described in detail above, the teachings of the Gare, Ang and Lusas References do not teach the currently-claimed proportions of the fiber component, or the requirement for calcium salts. Moreover, the three cited references use their various fiber components to achieve entirely distinct objectives, also described above. Therefore, an artisan would not have had reason to use the fiber component of one in combination with the teachings of another to achieve the currently claimed invention.

Therefore, the teaching of the Koumarianos Reference that a food additive can be dusted on a food produce would not provide the missing elements and teaching to a skilled artisan to arrive at the currently claimed composition.

### CONCLUSION

In view of the foregoing remarks and for various other reasons readily apparent, Applicant submits that all of the claims now present are allowable, and withdrawal of the rejection and a Notice of Allowance are courteously solicited.

If any impediment to the allowance of the claims remains after consideration of this amendment, a telephone interview with the Examiner is hereby requested by the undersigned at (214) 953-5990 so that such issues may be resolved as expeditiously as possible.

The Commissioner is authorized to charge any fees that have been overlooked or credit any overpayment to Deposit Account No. 10-0096.

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Respectfully submitted,

By: Amy L. Ulfers  
Amy L. Ulfers  
Reg. No. 61,069

Jackson Walker L.L.P.  
901 Main Street  
Suite 6000  
Dallas, Texas 75202  
Direct: 214-953-5982  
Fax: 214-661-6880  
Email: [ulfers@jw.com](mailto:ulfers@jw.com)